

STATE OF MICHIGAN
COURT OF APPEALS

JAMES MARTIN and LUCIA MARTIN,

Plaintiffs-Appellants,

v

SMG,

Defendant/Cross-Defendant/Third-
Party Plaintiff-Appellee,

and

GRAND RAPIDS-KENT COUNTY
CONVENTION AREA AUTHORITY,

Defendant/Cross-Plaintiff/Third-
Party Plaintiff-Appellee,

and

GRAND RAPIDS BALLET COMPANY, d/b/a
GRAND RAPIDS BALLET,

Third-Party Defendant.

UNPUBLISHED

May 24, 2007

No. 273528

Kent Circuit Court

LC No. 04-008611-NI

Before: White, P.J., and Saad and Murray, JJ.

WHITE, P.J. (*dissenting*).

I respectfully dissent. Plaintiff presented ample evidence from which a reasonable jury could conclude that the stairway collapsed because stagehands employed by defendant SMG failed to retract the castors, leaving the staircase unsecured.

Plaintiff's theory of causation is supported by the record. Plaintiff submitted below the deposition of Randy DeBoer, the carpenter of 20 years' experience who built the staircase at issue, had worked in theater carpentry for years, and was present at the time of plaintiff's fall. DeBoer opined that the stairway failed because stagehands had not disengaged the castors. Disengaging the castors was necessary for the staircase to be sitting directly on the floor so that the load of the unit and the persons on the unit is transferred to the floor. The gist of DeBoer's

opinion is that when the stairs are placed properly on the special Marley floor, a rubber floor that prevents sliding, the wood comes into contact with the floor and the friction keeps the stairs in place. The hinges at the wall are then subject to compression forces because the base is held in place. However, when the castors are not disengaged, the base of the stairs becomes subject to movement and instability. The forces on the hinges are greatly magnified and when the base moves, the hinges can be pulled away and disengage. Supporting this view are the additional facts that all of the hinges failed, and that the staircase had been used before without incident.

Defendants presented no expert evidence below, but rather, point to photographs taken of the staircase after its collapse—photographs showing broken hinges—and assert that this constitutes a theory of causation as likely to have occurred as plaintiff's theory. Defendants contend that the "accident report stated that the staircase feel [sic] because of the broken hinges." In fact, the accident report says no such thing. Rather, the report's section entitled "If property damage occurred, describe/attach photos", states: "See attached photos-staircase was attached to tall platform with basic pin hinges. hinges were attached to wood staircase with wood screws—hinges bent under weight-screws broke. stair case fell." Sandy Thomeley, the person who completed the accident report on which defendants rely testified on deposition that her report, and the section quoted above in particular, did not express an opinion about why the screws in the hinges broke, and that she herself had no opinion about why the staircase collapsed.

I fail to discern how photographs showing a discrete portion of the staircase at issue (the top portion), post-accident, establish a causation theory as probable as DeBoer's theory (who built the subject staircase), when defendants point to no testimony in support of their theory.

Finally, DeBoer and Nikodem testified that SMG stage hands were responsible for moving the staircase on the evening in question, and would have been the ones to move the staircase.

I thus conclude the circuit court improperly granted defendants summary disposition. Plaintiff presented sufficient evidence to raise a genuine issue of fact that stagehands, SMG employees, were responsible for the placement of the staircase on the evening in question, that they failed to disengage the castors on the bottom of the staircase, and that this led to the accident. I would reverse.

/s/ Helene N. White